

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER 98-0172P

Income Tax

Years: February 26, 1994 And December 31, 1994

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ISSUE

I. **Negligence Penalty.** – Imposition

Authority: IC 6-8.1-10-2, 45 IAC 15-11-2 (b)

The taxpayer protests the imposition of the negligence penalty.

STATEMENT OF FACTS

The taxpayer operates as a dry cleaner. A corporation up to December 1994 owned the taxpayer. In December 1994, a management buyout occurred where the corporation sold the taxpayer's assets.

In Indiana, the taxpayer has sixteen locations. Of these, seven locations are only for pick-up/drop-off. The taxpayer does not own any real property in the state. All in-state assets are either leasehold improvements or equipment. There are no vehicles leased or owned in-state.

I. **Negligence Penalty.** – Imposition

DISCUSSION

The taxpayer protests the imposition of the negligence penalty for the taxpayer failing to apply gross income tax to the sale of assets in the management buyout. The taxpayer assigned an accounting person to handle the filing of state taxes. As the person was unaware of the Indiana tax regulation that applies gross income tax to the sale of assets,

the application of the tax was not done. As such, the Department has assessed the negligence penalty for the taxpayer failing to exercise reasonable care.

The taxpayer argues that the Department should grant leniency and waive the negligence penalty as the misapplication was not willful and the taxpayer has a good compliance record with the State of Indiana.

Indiana Regulation 45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

The Indiana regulations are specific; the ignorance of Indiana tax regulations constitutes negligence. As such, the Department finds the taxpayer did not act with reasonable care and the imposition of the negligence penalty is proper.

FINDING

The taxpayer's protest is denied. The taxpayer was ignorant of Indiana tax regulations, and therefore, was negligent.